

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RASHAAN O. REED,

Petitioner,

v.

WARDEN, Allen/Oakwood
Correctional Institution,

Respondent.

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Case No. 3:20-cv-170

JUDGE WALTER H. RICE

DECISION AND ENTRY OVERRULING AS MOOT PETITIONER'S
OBJECTIONS (DOC. # 27) TO UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS ON MOTION TO
RECONSIDER (DOC. #15); ADOPTING UNITED STATES
MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT AND
RECOMMENDATIONS ON MOTION TO ALTER OR AMEND THE
JUDGMENT (DOC. #29); SUSTAINING SAID MOTION (DOC. #13);
VACATING JUDGMENT (DOC. #12); REFERRING TO MAGISTRATE
JUDGE FOR RULING ON PETITIONER'S MOTION FOR STAY AND
ABEYANCE TO ALLOW EXHAUSTION OF STATE COURT
REMEDIES (DOC. #30)

On June 24, 2020, the Court dismissed Petitioner Rashaan Reed's Petition Under 28 U.S.C. § 2254 with prejudice, and denied a certificate of appealability and leave to appeal *in forma pauperis*. Doc. #11. Judgment was entered against him. Doc. #12. Petitioner, proceeding *pro se*, then filed an "Application for Certificate of Appealability and Motion for Leave to Appeal *in forma pauperis*." Doc. #13. He also filed a Notice of Appeal, Doc. #14, which the Sixth Circuit has held in abeyance until this Court rules on the pending motion, Doc. #17.

On July 13, 2020, United States Magistrate Judge Michael R. Merz issued a Report and Recommendations, Doc. #15, construing Petitioner's "Application" as a Motion to Alter or Amend the Judgment under Fed. R. Civ. P. 59(e). He recommended that the Court deny the motion. Petitioner then obtained counsel, who filed Objections, Doc. #27, to the Report and Recommendations. The Court recommitted the matter to Magistrate Judge Merz, Doc. #28.

On October 28, 2020, Magistrate Judge Merz issued a Supplemental Report and Recommendations, Doc. #29. Therein, he noted that, although he had cited to certain Second District Court of Appeals decisions involving Petitioner, there now appeared to be additional decisions which he had not considered because he was unaware they existed. He recommended that the Court sustain Petitioner's Motion to Alter or Amend the Judgment, Doc. #13, and vacate the Judgment, Doc. #12. He would then order the State to file an answer and the full court record so that the Petition can be adjudicated on a complete record, and so that the Court will have the benefit of adversary presentation of all relevant issues, including the statute of limitations.

On November 11, 2020, Petitioner waived his right to file Objections to the Report and Recommendations. Doc. #31. He also filed a Motion for Stay and Abeyance to Allow Exhaustion of State Court Remedies. Doc. #30. On the same date, Magistrate Judge Merz issued Notation Orders withdrawing the initial Report and Recommendations, Doc. #15, and finding Petitioner's request for leave to appeal *in forma pauperis* to be moot.

Because Magistrate Judge Merz has withdrawn the initial Report and Recommendations, Doc. #15, the Court OVERRULES AS MOOT Petitioner's Objections, Doc. #27, to that judicial filing.

Based on the reasoning and citations of authority set forth by Magistrate Judge Merz in the Supplemental Report and Recommendations, Doc. #29, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS the Supplemental Report and Recommendations, and SUSTAINS Petitioner's Motion to Alter or Amend the Judgment, Doc. #13. The Court VACATES the Judgment, Doc. #12, entered on June 24, 2020.

The Court REFERS this matter to Magistrate Judge Merz for a ruling on Petitioner's Motion for Stay and Abeyance to Allow Exhaustion of State Court Remedies, Doc. #30.

Date: November 13, 2020



WALTER H. RICE
UNITED STATES DISTRICT JUDGE